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FEDERAL COMMUNICATIONS COMMISSION  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Allocation of Spectrum Below ) ET Docket No. 94-32  
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To: The Commission

**REPLY COMMENTS OF THE  
ASSOCIATION OF AMERICAN RAILROADS**

The Association of American Railroads ("AAR"), by its attorneys and pursuant to Section 1.415 of the rules of the Federal Communications Commission ("the Commission"), hereby submits its Reply Comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding.

In its Comments, the AAR urged the Commission to reevaluate its tentative allocations of 50 MHz of spectrum transferred from Federal Government to private sector use and to allocate a band of spectrum for advanced private land mobile services. There was overwhelming support from private radio users and equipment manufacturers to allocate a portion of the 50 MHz of spectrum for private use as requested by the Coalition of Private Users of Emerging Multimedia Technologies ("COPE") in light of the expanding need for such private radio uses. The Comments demonstrate convincingly that such an allocation would be in the

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public interest because it will meet the statutory goals of promoting safety, fostering economic growth and improving access to communications by industrial, transportation, utility and public safety users.

**I. THE COMMENTS DEMONSTRATED THAT THE COMMISSION'S REASONING FOR NOT ALLOCATING SPECTRUM TO PRIVATE RADIO USERS IS FLAWED**

The private radio user community and manufacturers of private radio equipment unanimously demonstrated that the Commission's rationale for failing to allocate a portion of the soon-to-be-released Federal Government spectrum for advanced private communications is flawed.

**A. Additional Spectrum Should Be Allocated Based on the Safety and Operational Needs of the Private Radio Users**

Each private radio user and manufacturer commenting in this proceeding maintained that the Commission's assertion that private users can receive similar services from commercial providers was inaccurate. For example, the AAR charged that such reasoning did not take into account the safety of life and property and improving the efficiency of spectrum use based upon sound engineering principles, user operational requirements, and marketplace demand, all as required by Section 332(a) of the Communications Act. 47 U.S.C. § 332(a). AAR at 4-6. The Personal Communications Industry Association ("PCIA") echoed the AAR's comments about the uniqueness of railroad radio communications and the "extreme difficulty for the railroad industry to obtain service from carrier systems." PCIA at 5-8.

Commenters representing other industries also disagreed with the Commission's assertion of the availability or feasibility of using commercial carriers to replace private radio systems. For example, the Industrial Telecommunications Association ("ITA") stated that licensees of commercial telecommunications systems do not have the incentive or the ability to satisfy the telecommunications requirements of industrial, public service and public safety organizations. ITA at 10-11. The American Petroleum Institute ("API") stressed that commercial systems frequently do not meet the specialized reliability and infrastructure needs of many private users. API at 14. Finally, The Mobile and Personal Communications Division and Fixed Point-to-Point Microwave Section of the Telecommunications Industry Association ("TIA") demonstrated that private users cannot satisfy their specialized communications needs from commercial carriers because private radio licensees such as the railroads and oil companies have important operations in remote locations which cannot be met by commercial carriers. TIA at 6-7. Accordingly, the Commission should recognize the unique operational, safety and reliability needs which are met by private radio systems, and which cannot be met by services offered by commercial carriers.

**B. Section 309(j) Prohibits the Commission from Altering the Act's Established Spectrum Allocation Criteria and Procedures**

The entire private radio user community took issue with the Commission's rationale that private radio users can compete on

the same basis as commercial providers in obtaining spectrum. The commenting parties demonstrated that such reasoning violates the standards governing the Commission's use of competitive bidding authority under Section 309(j) of the Communications Act. 47 U.S.C. §309(j).

The AAR, for example, cautioned in its Comments that the plain language of Sections 309(j)(1) and 309(j)(6)(1) does not permit the Commission to use competitive bidding as a criterion by which to decide the appropriate allocation of new spectrum. AAR at 6-7. Indeed, every commenting private radio user or equipment manufacturer, including API, ITA, PCIA, TIA, UTC, Motorola, the County of Los Angeles and the Forest Industries Telecommunication Association, showed that the plain language of Section 309(j) allows competitive bidding to be used solely as a license assignment tool, rather than an allocation tool. See, e.g., API at 13-14.


## II. Conclusion

In light of the facts and the law articulated by the private radio users in their Comments, the Commission should reevaluate its tentative spectrum allocations for this band and consider allocating additional spectrum to private users to support their operations and to safeguard life and property. Consistent with such reevaluation, AAR urges the Commission to set aside a

portion of the reallocated Federal spectrum for the types of uses described in the COPE petition.

Respectfully submitted,

**THE ASSOCIATION OF AMERICAN RAILROADS**

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January 3, 1995

CERTIFICATE OF SERVICE

I, Deirdre A. Johnson, hereby certify that on this 3rd day of January, 1995, a copy of the foregoing "Reply Comments of the Association of American Railroads" was hand-delivered to the following:

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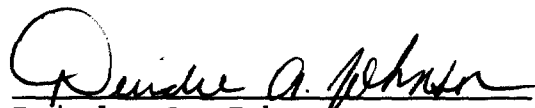
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